

REGULATORY BRANCH

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT



US Army Corps
of Engineers®
Buffalo District
BUILDING STRONG®





Mission

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

REGULATORY MISSION

Our mission is to serve the public interest in Ohio and New York, providing responsive, quality service by balancing protection and reasonable use of aquatic resources through efficient administration of the Regulatory Program.

REGULATORY PROGRAM CONTACT INFORMATION

Buffalo District Office

716-879-4330, Fax 716-879-4310
1776 Niagara Street, Buffalo, NY 14207
Email: LRB.Regulatory@usace.army.mil

Auburn Field Office

315-255-8090, Fax 315-255-1492
7413 County House Road, Auburn, NY 13021

Oak Harbor Field Office

419-898-3491, Fax 419-898-4292
240 Lake Street, Unit D, Oak Harbor, OH 43449

Stow Field Office

330-923-8197, Fax 330-923-8146
1100 Graham Road Circle, Stow, OH 44224

<http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

Understanding the U.S. Army Corps of Engineers' Regulatory Program, in combination with complimentary regulatory programs in the states of New York and Ohio, is vital to the success of the program. Through responsible and thoughtful development, we can work together to protect New York and Ohio's water resources, ensuring their use and enjoyment for future generations.

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Mission

WORKING TOGETHER

Every year, citizens of New York and Ohio begin work on numerous construction projects that could potentially impact the Nation's rivers, streams, wetlands, and other aquatic resources. Many of these projects have tremendous value for individuals, communities, and the economy.

Through the Regulatory Program, the U.S. Army Corps of Engineers (Corps) ensures that environmental impacts on aquatic resources associated with these projects are avoided, minimized, and mitigated. The Corps is dedicated to protecting New York and Ohio's waters while allowing reasonable and necessary development to move forward. The Corps asks for your help in spreading the word to others about the permit requirements outlined here and solicits your views on better ways to attain the goals of this program.



EMERGENT WETLAND AND STREAM

Your comments, questions, and suggestions can be provided to your local Regulatory Office or by e-mailing LRB.Regulatory@usace.army.mil

U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM

The Department of the Army Regulatory Program is one of the oldest Corps of Engineers' programs. Initially, the Regulatory Branch (RB) served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the Nation's waters, under Section 10 of the Rivers and Harbors Act of 1899. In 1972, the Clean Water Act was signed into law, and the Department of the Army was directed to administer Section 404 of the Act, which regulates the discharge of dredged and/or fill material in waters of the United States (U.S.). In 1977, the Corps' jurisdiction was increased to include wetlands as part of the waters of the U.S.



CLEVELAND HARBOR, OHIO



Our History

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT



FINGER LAKES, NEW YORK

WHAT IS A WETLAND?

The Corps and the U.S. Environmental Protection Agency (U.S. EPA) define wetlands as “areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

Wetlands generally include swamps, marshes, bogs, and similar areas. Some wetlands, such as swamps or marshes, are often obvious, but some wetlands are not easily recognized because they are dry during part of the year or don't appear to be very wet.

Wetlands serve important functions relating to people, fish, and wildlife. These include protecting uplands from erosion, providing storage for storm and floodwaters, and performing natural water filtration and purification functions. Wetlands also provide food chain production and habitat for nesting, spawning, rearing, and resting sites for aquatic and land species.



EMERGENT/SCRUB-SHRUB WETLAND



FORESTED WETLAND



What is a wetland?

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

HOW DOES THE CORPS DETERMINE IF AN AREA IS A WETLAND?

Determining whether an area is a wetland under the Corps' authority is an important step. Certain activities in Corps-regulated wetlands and other waters require a permit, which the Regulatory Branch realizes adds time and paperwork to projects. Consequently, a scientific process is followed to make wetland determinations. Under normal circumstances, if an area exhibits positive criteria for wetland plants, soils, and hydrology, it is determined to be a wetland under the Regulatory Program.

A site visit is the most accurate way to determine if an area is a wetland, but the Corps can also utilize additional resources, including existing:

- Soil maps
- Wetland mapping
- Photos provided by applicants, aerial photos, and previous site visits
- United States Geological Survey (USGS) maps
- United States Fish and Wildlife National Wetland Inventory maps



LINKS AND RESOURCES

National Wetlands Inventory maps produced by the U.S. Fish and Wildlife Service are available at: www.fws.gov/wetlands/

Soil surveys from the Natural Resources Conservation Service can be accessed at: <https://websoilsurvey.nrcs.usda.gov/app/HomePage.htm>

NATIONAL WETLAND INVENTORY AND SOILS MAPS DISCLAIMER:

Please note that National Wetland Inventory maps do NOT represent site-specific aquatic resource delineations (i.e. wetlands, streams, tributaries, drainage ways), for the purposes of the Corps Regulatory Program.

The U.S. Fish and Wildlife Service created the National Wetland Inventory maps to use as habitat planning maps – these are not Army Corps wetland maps. The maps can provide general information pertaining to a specific parcel; however, they CANNOT be used to confirm presence/absence of wetlands, wetland boundaries, nor do they adequately depict other aquatic resources such as intermittent or ephemeral streams that may be present on a parcel. In most cases, the only definitive answer is by an on-site determination and/or delineation by a qualified wetland biologist.

Also note that the National Resource Conservation Service soil survey and soil maps depict GENERAL soil mapping and descriptions. Any statements indicating that the overall soil series is not considered hydric may not (and many times does not) confirm the absence of hydric soils within a given parcel.

Federal Wetland Maps Disclaimer:

A site-specific aquatic resource delineation must be completed as part of the permit application process. There are no federal maps designating jurisdictional boundaries or limits of aquatic resources. Aquatic resource delineations need to be performed using the 1987 Corps of Engineers Wetland Delineation Manual and appropriate Regional Supplement. Aquatic resource delineations and jurisdictional determinations need to be verified by the Corps to be valid.



What is a wetland?

Building activities within waters of the U.S. that may require permits include (but are not limited to):

- Placement of fill material
- Ditching activities when the excavated material is sidecast
- Mechanized land clearing
- Land leveling
- Most road construction
- Dam construction, weirs
- Mining activities
- Structures in navigable waters
- Bank stabilization, utility line installation
- Culverts (including but not limited to backfill, grading, bedding material, and concrete)



PERENNIAL STREAM

WHAT TYPES OF WORK REQUIRE A PERMIT?

SECTION 10

Section 10 of the Rivers and Harbors Act of 1899 requires approval prior to the accomplishment of any work in, over, or under navigable waters of the U.S., or which affects the course, location, condition, or capacity of such waters.

Typical activities requiring authorization under Section 10 include:

- Construction of piers, wharves, breakwaters, jetties, weirs, marinas, ramps, floats, intake structures, docks, decks, boat hoists, boathouses, and cable or pipeline crossings
- Work such as dredging or disposal of dredged material
- Excavation, filling, or other modifications to navigable waters of the U.S.

SECTION 404

Section 404 of the Clean Water Act requires permit authorization to discharge dredged or fill material into the waters of the U.S., including wetlands. Typical activities requiring authorization under Section 404 include:

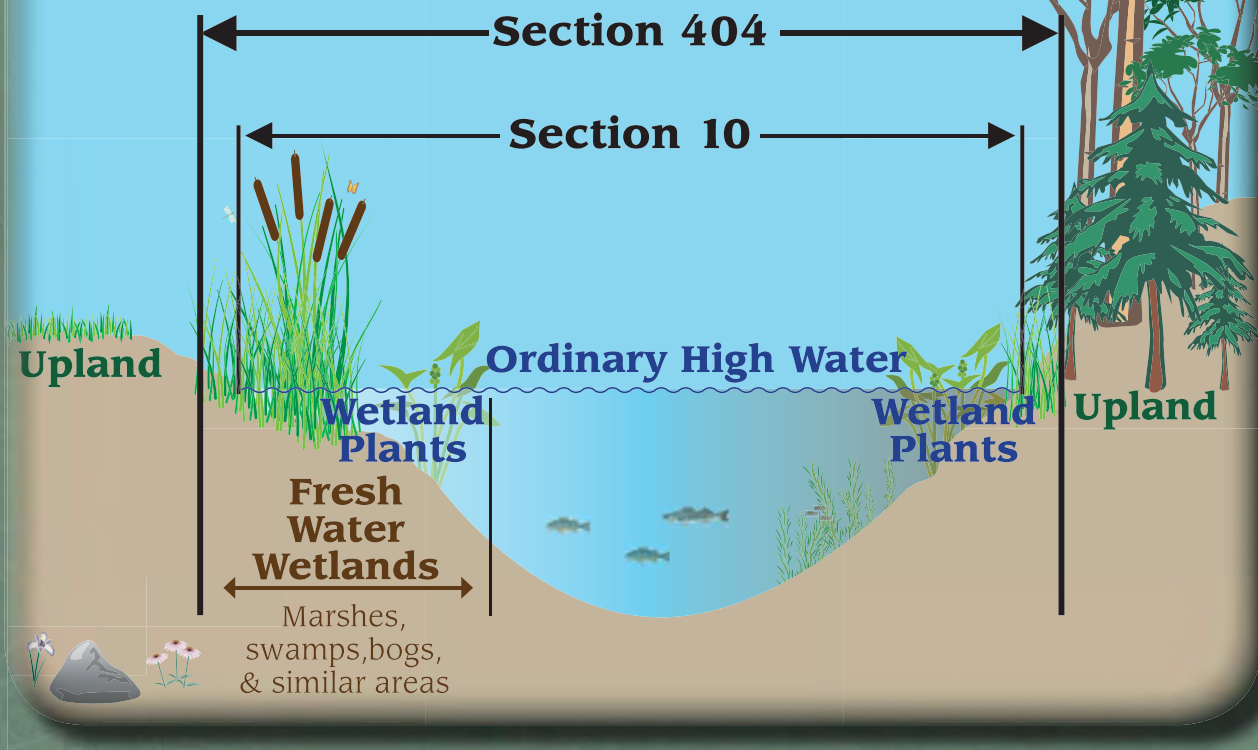
- Discharging fill or dredged material in waters of the U.S., including wetlands
- Site development fill for residential, commercial, or recreational projects, including, but not limited to mechanized land clearing, and construction of breakwaters, dams, weirs, roads, and utility lines
- Placement of riprap and road fills



Jurisdiction

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

Fresh Waters



The permit evaluation process balances the need for development with protection of aquatic resources.

WHO SHOULD OBTAIN A PERMIT?

Any person, firm, or agency (including federal, state and local governments) planning to place structures or conduct work in navigable waters of the U.S., or discharge (dump, place, or deposit) dredged or fill material in waters of the U.S. must first obtain a permit from the Corps. Other federal, state, and local statutes may require additional permits, licenses, variances, or similar authorization.

TYPES OF PERMITS

STANDARD PERMITS

Standard Permits are issued following a full public interest review of a permit application for a Department of the Army permit. A public notice (usually 30 days in length) is distributed to all known interested persons. The permit decision is generally based on the outcome of a public interest balancing process, where both the benefits and detriments of the project are evaluated. A permit will be granted unless the proposal is found to be contrary to the public interest or fails to comply with the U.S. EPA's 404(b) (1) Guidelines. The 404(b)(1) Guidelines allow the Corps to permit only the least environmentally damaging practicable alternative.

Processing time usually takes 90 to 120 days after receipt of a complete application, unless a public hearing is required or an environmental impact statement must be prepared. More complex or controversial projects may extend processing time.

LETTERS OF PERMISSION

Letters of Permission are a type of permit issued through an abbreviated processing procedure, which includes coordination with federal and state agencies, and adjacent property owners, and a public interest evaluation. Processing time routinely takes 60 to 120 days after receipt of a complete application. More complex or controversial projects may extend processing time.



Permits

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

REGIONAL GENERAL PERMITS

Regional Permits are issued by the Buffalo District Engineer for a general category of activities when the activities are similar in nature and cause minimal environmental impact, both individually and cumulatively. Processing time usually takes less than 60 days after receipt of a complete application.

NATIONWIDE PERMITS

Nationwide Permits (NWP) authorize specific activities in areas under Corps' Regulatory jurisdiction (navigable waterways, wetlands, etc.). These activities have been determined to be minor in scope and must result in no more than minimal adverse impacts, both individually and cumulatively. Individuals wishing to perform work under a NWP must ensure their project meets all applicable terms and conditions, including the regional conditions specific to Buffalo District. If the terms and conditions of the NWP cannot be met, an individual permit will be required. Processing time usually takes less than 60 days after receipt of a complete application.



FORESTED WETLAND

HOW DO I APPLY FOR A PERMIT?

Visit <http://www.lrb.usace.army.mil/Missions/Regulatory> to access application forms and directions on how to complete the application, or contact the Buffalo District office at 716-879-4330 to request a permit application form be sent to you in the mail.

WHAT HAPPENS AFTER I APPLY?

- Regulatory reviews a permit application for completeness and contacts the applicant if additional information is required.
- Jurisdiction is determined. Not all activities are regulated, and some project sites are not within the Corps' jurisdictional authority.
- If a permit is required, a Regulatory project manager will determine what type of permit is appropriate and coordinate with other agencies and the public, as appropriate.
- If appropriate, an environmental assessment is prepared, which aids with permit decision-making.
- The permit is issued if in the public interest and in compliance with the 404(b)(1) Guidelines.
- Regulatory staff may visit the site before, during, and/or after construction.

For a list of required items to be included in the permit application, please see: <http://www.lrb.usace.army.mil/Missions/Regulatory>



Permits

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT



FINGER LAKES, NEW YORK

The Corps' Regulatory Program evaluation process results in permit decisions that balance the need for proposed development with protection of the Nation's aquatic environment.

The level of Corps' evaluation is on par with the level of the environmental impacts, aquatic functions, and values of a particular area. Impacts to higher ecological value areas will be subject to a more detailed evaluation and a strong focus on avoidance of impacts to the aquatic environment.

For more on permitting and the permits issued by the Corps, visit our website at <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>

MITIGATION

On April 10, 2008, the Corps and the U.S. EPA published a new rule, entitled “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule.” The rule addresses the sequence for mitigating unavoidable impacts to aquatic resources that result from work authorized by permits under the Corps’ Regulatory Program.

All steps to avoid and/or minimize impacts to aquatic resources must be taken before proposing compensatory mitigation to offset project impacts. The rule establishes standards and criteria for all types of compensatory mitigation, including wetland mitigation banks and in-lieu fee programs.

To offset authorized unavoidable impacts to waters of the U.S., permit applicants are required to describe how they will avoid, minimize, and compensate for impacts to waters of the U.S. as follows:

MITIGATION SEQUENCE

1) Avoid

As part of your project planning process, describe how you avoided impacts to waters of the U.S. Examples of avoidance measures include evaluation of similar criteria for alternative sites/locations, use of alternate routes, and modification of the project footprint and design configurations.

2) Minimize

Describe how your project design will incorporate measures that minimize unavoidable impacts to waters of the U.S. by limiting discharges of fill to the minimum amount/size necessary to achieve the project purpose.



Mitigation

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

3) Compensatory Mitigation

Once all efforts to avoid and minimize impacts have occurred, remaining impacts may need to be offset by compensatory mitigation. The permit applicant needs to describe how his/her proposed compensatory mitigation would offset unavoidable impacts to waters of the U.S., or alternatively, why compensatory mitigation is not appropriate or practicable for the project. Compensatory mitigation involves actions taken to offset authorized unavoidable adverse impacts to waters of the U.S., including wetlands, streams, and other aquatic resources.



PERENNIAL STREAM

WHAT IS COMPENSATORY MITIGATION?

Compensatory mitigation tools include purchase of credits from a mitigation bank or in-lieu fee program, and permittee-responsible mitigation (for example: establishment, reestablishment, enhancement). Refer to page 19 for more information.

Compensatory mitigation for unavoidable impacts is required to replace the loss of wetland, stream, and/or other aquatic resource functions. Methods of providing compensatory mitigation include aquatic resource restoration, establishment, enhancement, and in certain circumstances, preservation.



FORESTED WETLAND



Mitigation

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

COMPENSATORY MITIGATION

A permittee-responsible compensatory mitigation plan should include:

- Objectives
- Site selection criteria
- Site protection instrument
- Baseline information
- Determination of credits
- Mitigation work plan
- Maintenance plan
- Performance standards
- Monitoring requirements
- Long-term management plan
- Adaptive management plan
- Financial assurances
- Other relevant information

For information regarding Wetland Mitigation Banks and In-lieu fee Stream and Wetland Mitigation Programs, please refer to the Regulatory In-lieu fee and Bank Information Tracking System (RIBITS) at the following website:
https://ribits.usace.army.mil/ribits_apex/f?p=107:2



APPEALS

The Corps has an administrative appeal process whereby applicants and landowners may appeal denied permits, issued permits that contain requirements that are unacceptable to the applicant, or approved jurisdictional determinations, which are made by the Buffalo District. The request for an appeal of such decisions must be received by the Great Lakes and Ohio River Division office within 60 days of the date of the appealable decision. A site visit or an appeal conference or meeting may be conducted during the appeal process. The Division office makes its decision on the appeal based on a review of the District's administrative record. The Division will either uphold the District decision or remand the case back to the District with instructions the District must follow to reconsider the initial determination.

For more information on the appeals process, visit our website at <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/>



Appeals

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT



PERENNIAL STREAM

COMPLIANCE

Once a permit is issued, compliance with all terms and conditions of the permit is required. The Corps may conduct inspections during or after construction to determine if the work is in compliance with the permit. If the Corps determines the work is not in compliance with the permit, there are several options the Corps may pursue with the permittee to resolve the non-compliance action. These options include voluntary restoration, permit modification, and/or administrative penalties.



TOLEDO, OHIO



Compliance and Enforcement

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

ENFORCEMENT

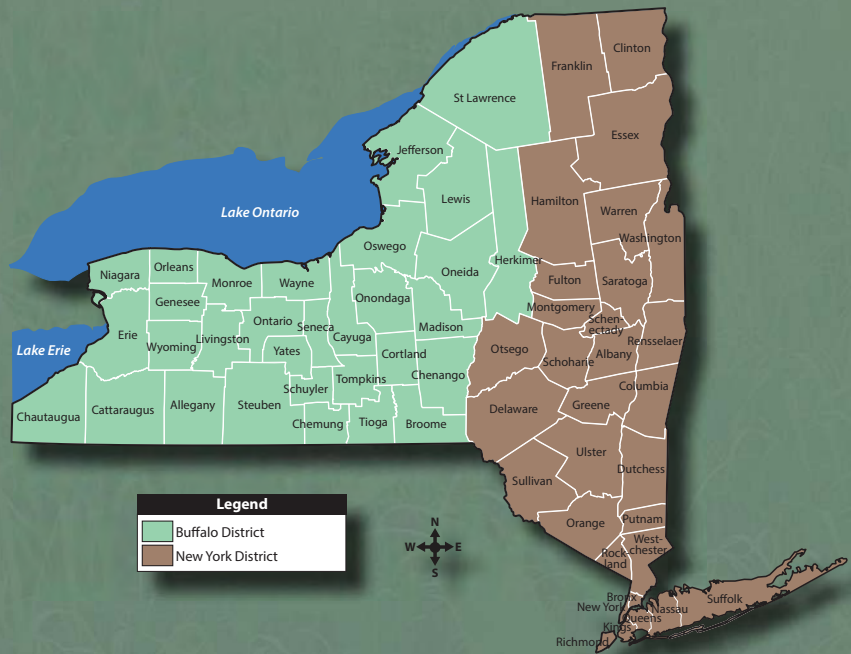
Performing work in waters of the U.S. without proper Corps authorization can have serious consequences. Enforcement is an important part of the Corps' Regulatory Program. State and federal agencies, groups, and individuals that report suspected violations often aid Corps' surveillance and monitoring activities. The Corps may issue orders requiring corrective action including removal of the unauthorized fill/structure and restoration of the area. The Corps may accept an after-the-fact permit application, initiate legal action, or recommend referral to the U.S. EPA for administrative, civil, or criminal penalties. The U.S. EPA has independent enforcement authority under the Clean Water Act for unauthorized discharges. The Corps works closely with the U.S. EPA to coordinate the most effective and efficient resolution of Section 404 Clean Water Act violations.

If you suspect a violation of the Clean Water Act, please contact the Buffalo District at 716-879-4330 or e-mail: Regulatory@usace.army.mil

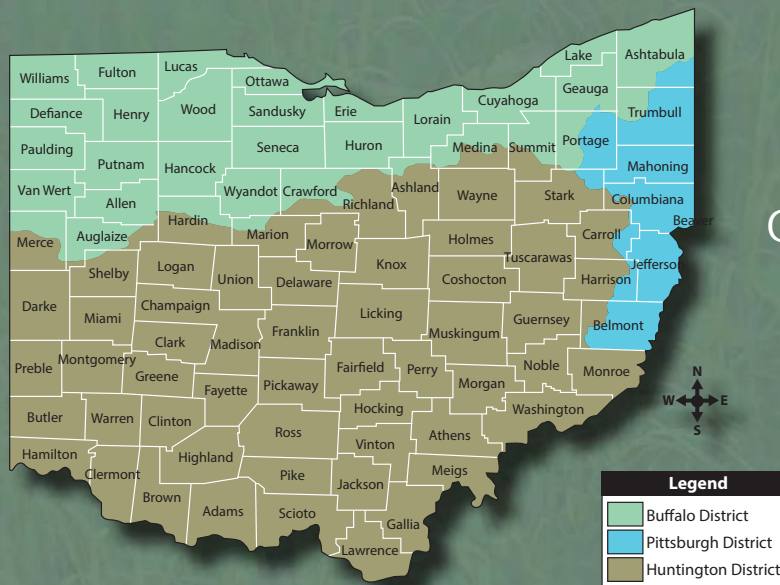


CLEVELAND, OHIO

NEW YORK



OHIO



District Boundaries

U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT

For more information on the Corps regulatory program, permits, and permits issued by the Corps, visit our website at <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>



INTERMITTENT STREAM



U.S. ARMY CORPS OF ENGINEERS BUFFALO DISTRICT